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In re Application of
John K. Stevens
Application No. 10/711,334
Filed: September 10, 2004
Attorney Docket No. JKMS.P-007-DV

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OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition filed November 21, 2005, requesting that the above-identified application be accorded a filing date of September 10, 2004, rather than the current filing date of December 6, 2004, with Figure 2 as part of the original disclosure.

On September 10, 2004, applicant filed the above-identified application. On October 12, 2004, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" (Notice), stating that the application was accorded a filing date of September 10, 2004; however, it appeared that Figure 2 was omitted.

In response, on December 6, 2004, applicant submitted a "Response to Notice of Omitted Item(s)" and a copy of Figure 2. The Response stated that Figure 2 contained no new matter because it was incorporated by reference. Thereafter, the Office of Initial Patent Examination accorded the application a filing date of December 6, 2004; the date applicant submitted the missing Figure 2.

On November 21, 2005, applicant submitted the present petition, a preliminary amendment, and one sheet of drawings containing Figures 1 and 2. Applicant asserted that the present application is a divisional application of Application No. 10/297,246, which incorporated the parent application in its entirety.

Upon a review of the record, Figure 2 has not been located in the official file. However, as applicant previously stated, the specification indicates: "This application is a divisional of U.S. Application No. 10/297,246, filed December 3, 2002, incorporated herein by reference."

Section 201.06(c) of the Manual of Patent Examining Procedure states that:

... an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing

application to include any subject matter in such prior application(s), without the need for a petition. (Emphasis supplied).

In view of the incorporation by reference of Application No. 10/297,246, Figure 2 is not new matter if it was part of the disclosure of Application No. 10/297,246. Nevertheless, the Notice mailed on October 12, 2004, was correct in stating that Figure 2 appeared to have been omitted. Therefore, Notice will not be withdrawn.

It appears that applicant did not intend to accept the date applicant submitted omitted Figure 2 in the USPTO as the filing date of the above-identified application. Therefore, the petition is **granted** to the extent that the application will be accorded the filing date of September 10, 2004, **without** Figure 2 as part of the original disclosure.

The examiner will review the preliminary amendment filed November 21, 2005, requesting entry of the one drawing sheet (containing Figures 1 and 2) and make a determination of whether new matter is present.

The Office of Initial Patent Examination is directed to accord the application a filing date of September 10, 2004. Figure 2 will not be entered at this time.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

Christina T. Donnell

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